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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,896

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Gregory Yelland

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC

701 FIFTH AVE

SUITE 5400

SEATTLE, WA 98104

EXAMINER

SZMAL, BRIAN SCOTT

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/541,896

**Applicant(s)**

YELLAND ET AL.

**Examiner**

Brian Szmaj

**Art Unit**

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-6, 9, 10, 12-16, 18, 22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) in view of Hongo et al (5,345,944).

Polat et al disclose a means for measuring a user's perception of a visual stimulus and further disclose presenting a visual test to the user for a predetermined stimulus exposure duration; measuring a response from the user, the response providing information about the user's perception of the test stimulus and a response time; repeating the application of the test stimulus and measuring a response thereto to develop a user profile; comparing the user profile to a reference profile to assess cognitive impairment in the user; repeating the stimulus for a range of durations; the data obtained from a reference group comprises normal individuals; repetitions of the stimulus exposure are separated by a uniform time interval; the user has a choice of two different responses for responding to each stimulus; one of two or more different stimuli are presented to the user; measuring the response includes acquiring either a correct or an incorrect indication of the visual stimulus; and the output can comprise graphs and curves. See Column 5, lines 3-7 and 21-23; Column 6, lines 1-17; Column 9, lines 22-30; and Column 12, lines 33-57.

Polat et al however fail to disclose masking the stimulus; repeating the stimulus for a range of durations; presenting a focal point to the user before presenting the stimulus to the user; calculating for each stimulus duration an error rate; an error rate curve for the user; repetitions of the stimulus exposure are separated by a uniform time interval; and the mask comprises at least one filled circle.

Hongo et al disclose a means for applying a visual stimulus for a diagnosis and further discloses masking the stimulus; calculating for each stimulus duration an error rate; an error rate curve for the user; calculating a means error for responses at each test stimulus exposure duration; and the mask comprises at least one filled circle. See Figures 7, 8 and 11; Column 2, lines 5-18 and 24-28; Column 3, lines 36-48; and Column 6, lines 19-26.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the means of Polat et al to include the use of a mask, as per the teachings of Hongo et al, since it would provide a means of controlling the exposure of the stimulus to the user, in order to obtain an accurate measurement of a response time.

3. Claims 3, 19, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and Hongo et al (5,345,944) as applied to claims 1, 18, 20 and 22 above, and further in view of Shekels (2,564,794).

Polat et al and Hongo et al, as discussed above, disclose a means for measuring a response to a stimulus, but fail to disclose presenting a focal point stimulus to the user before presenting the visual test to the user.

Shekels disclose a field of vision testing means and further disclose presenting a focal point stimulus (49) to the user before presenting the visual test to the user. See Column 11, lines 18-53.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and Hongo et al to provide a focal point stimulus, as per the teachings of Shekels, since it is well known in the art to provide a focal point stimulus when testing the user's eyesight or providing a test involving the eye.

4. Claims 7, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and Hongo et al (5,345,944) as applied to claim 1 above, and further in view of Rootzen et al (5,381,195).

Polat et al and Hongo et al, as discussed above, disclose a means of measuring a response time to an applied visual stimulus and providing an output in the form of a graph, but fail to disclose calculating a mean response time; and the stimulus has an exposure duration between 10ms and 300ms.

Rootzen et al disclose a means for testing a user's perception and further disclose calculating a mean response time; and the stimulus has an exposure duration between 10ms and 300ms. See Column 5, lines 59-60; and Column 6, lines 21-41; and Claim 5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and Hongo et al, to include calculating a means response time and a stimulus exposure duration, as per the

teachings of Rootzen et al, since it would provide a means of accurately determining the attention of the user, to determine whether the user is impaired.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and Hongo et al (5,345,944) as applied to claim 1 above, and further in view of Bachman et al (4,241,942).

Polat et al and Hongo et al, as discussed above, disclose a means of measuring a response time to an applied visual stimulus but fail to disclose the mask comprises a plurality of curved lines.

Bachman, as discussed above, discloses a means for masking a visual stimulus and further discloses a mask having a plurality of curved lines. See Figure 6; and Column 2, lines 10-27. Even though the "mask" is not utilized during a visual test, the mask is utilized to prevent a user from seeing the underlying material, in the same way the current invention's mask prevents the user from seeing the underlying visual stimulus.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and Hongo et al, to include the use of a mask having a plurality of lines, since it is well known in the art to utilize various types of masks during a visual test, including straight lines as well as curved lines.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1 -25 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmal whose telephone number is (571)272-4733. The examiner can normally be reached on Monday-Friday, with second Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian Szmal/  
Patent Examiner, Art Unit 3736